

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>DENNIS COOK</b>	:	<b>CASE NO. 1:02cv00073</b>
	:	
<b>Plaintiff</b>	:	<b>(Weber, J.)</b>
	:	
<b>-v-</b>	:	
	:	
<b>CITY OF NORWOOD, et al.</b>	:	
	:	
<b>Defendants</b>	:	

**REPLY OF DEFENDANT CITY OF NORWOOD IN SUPPORT OF MOTION  
FOR ORDER IN LIMINE TO EXCLUDE EVIDENCE**

In his Memorandum in Opposition, Plaintiff agrees to the exclusion of the testimony of Dennis Jones, Ray Erwin, Leo Osterday, Joe Lacinak, and Roger Perkins pertaining to Plaintiff's dismissed claims for age discrimination and agrees that the testimony of these individuals will be limited to "allegations contained in the complaint which remain for trial." (Memorandum in Opposition, p. 3.) Contrarily, however, Plaintiff argues that the individual cases filed by Jones, Erwin, Osterday, Lacinak, and Perkins, which cases involve claims of age discrimination and not disability discrimination, are "relevant as they address issues of retaliation against the Plaintiffs in those actions." (Memorandum in Opposition, p. 5.) Plaintiff should not be allowed to gain the admission of evidence pertaining to claims dismissed by the Court by introducing evidence from these other cases particularly in light of his agreement to limit the testimony of the individuals pursuing these cases to Plaintiff's remaining claims, which are claims for disability discrimination.

Plaintiff also opposes the exclusion of "EEOC charges by any other employee." (Memorandum in Opposition, p. 5.) However, Plaintiff does not challenge the fact that none of

the EEOC charges filed by other employees contained allegations of disability discrimination or retaliation and are therefore irrelevant to the claims remaining in this case. Further, Plaintiff's proposed use of "many" documents pertinent to claims in those other cases, which are other than for disability discrimination, will serve only to lengthen trial of the remaining claims in this case, as well as to confuse the jury.

For the reasons set forth in Plaintiff's Motion, both the testimony of expected witnesses, as well as the existence of pending cases filed by those witnesses, which pertain to claims other than Plaintiff's remaining claims for disability discrimination, should be excluded.

**s/Lawrence E. Barbieri**

---

Lawrence E. Barbieri  
Ohio Bar Number: 0027106  
Michael E. Maundrell  
Ohio Bar Number: 0027110  
Attorney for Defendant, City of Norwood  
**SCHROEDER, MAUNDRELL, BARBIERE & POWERS**  
11935 Mason Road, Suite 110  
Cincinnati, OH 45249  
(513) 583-4200  
(513) 583-4203 (fax)  
Email: [lbarbieri@schroederlaw.com](mailto:lbarbieri@schroederlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on **June 7, 2004**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following: Robert G. Kelly, Esq., *Attorney for Plaintiff*, W. McGregor Dixon, Jr., Esq., *Attorney for Joseph J. Hochbein*, James F. Brockman, Esq., *Attorney for Kevin Cross*, and to Steven Martin, Esq., *Attorney for Defendant, Gary Hubbard*.

**s/ Lawrence E. Barbieri**

---

Lawrence E. Barbieri  
Ohio Bar Number: 0027106